93-793

Supreme Court, U.S.
FILED
OCT 18 1993
OFFICE OF THE CLERK

NO.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

ELEANOR BENT

vs.

MASSACHUSETTS GENERAL HOSPITAL, LAHEY CLINIC FOUNDATION, FALMOUTH HOSPITAL, SOUTH SHORE HOSPITAL

PETITION FOR A WRIT OF CERTIORARI

United States Court of Appeals
For the First Circuit

PETITION FOR A WRIT OF CERTIORARI

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30 pp

QUESTION PRESENTED

Did The United States District Court for the District of Massachusetts dismiss No. 93-1296 in good faith, by stating "lack of subject matter jurisdiction", when, in fact, the subject matter concerned a violation so egregious as to constitute a violation of the Constitution of the United States in depriving me of liberty, privacy, and ultimately my life, (as I am dying a slow, heinous, barbaric and tortuous death, secondary to metastasis via the lymph system on 1/8/89 and via the circulatory system, secondary to a 1/30/89 Endometrial Biopsy....which no physician would diagnose and/or treat, (on the contrary, proof is offered that they conspired to "cover" the neoplastic metastasis and septicemia), and concerning which no lawyer would represent me, secondary to false "Gorilla Dust"/propaganda about the reasons I "cared for" my mother and requested her medical records.

That I stated a viable civil rights claim (42 U. S. C. : 1983), may be read in the brief.

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Opinion of the Court of Appeals from the United States Court for the District of Massachusetts. Hon. Joseph L. Tauro, U.S. District Judge before Breyer, Chief Judge, Salya and Boudin, Circuit Judges.

Appendix B 18

Judge Cortland Mathers Judgement of "no genuine issue," an affront to the sanctity of life and women.

Appendix C 20

Judge Mathers' agreement that "proof of the elements of her claim is unlikely to be forthcoming at trial" ... when he realized that Massachusetts General Hospital refused to honor the Subpoena which would have provided my complete and accurate record, including the proof that the 1/30/89 biopsy allowed neoplastic and septic metastasis, via the circulatory system, secondary to a three inch cut made mid-line of the uterine wall.

Appendix D 22

Judge Mathers dismissal of complaints re Dr. Gelman and his advisement "No further proceedings are to be docketed when presented by this plaintiff without prior approval of the "regional administrative justice" (himself ... ensuring that the wrongs would not be exposed, as Drs. Murray, Greenstein, Mazurkie, Beckhardt, Dave Nair and Thia Sontag, South Shore Hospital and Dr. Peter Hoshino, Lahey Clinic and Berton Mandel, Goddard Medical Associates and Memorial Hospital, Cardinal Cushing General Hospital, etc. all of my complaints had been likewise dismissed, despite the presentation of substantiated proof of my claims), when the Statute of Limitations had no run, and the "Relief I was seeking wasn't financial, but exposure of the truth, and acknowledgement of responsibility/accountability. I believe the Unscrupulous wanted me to state a "dollar" amount, just as I was baited to file suit, so that physicians would "bind together", falsely assuming I was litigious ... looking for monetary compensation "as in 1987 re her mother," which was false, as in both instances I was looking for Justice and not in the form of a check (no amount of money could adequately compensate for the loss of life, and

sufferings, I and my family have endured, secondary to physicians' errors and the "charade" of justice in the Medical Tribunal System, where doctors tighten the chains of secrecy in their silence and "frivolous" false adjudications ... and the refusal of lawyers to represent me,despite the presented proof!). This collaboration and the "baiting", "blackmail", propaganda and "Gorilla Dist" tactics have no place in a free country. The physicians on the Tribunals are guilty of Obstruction of Justice, just as Dr. Morrison of Pembroke Hospital was ... in her outrageous lies to Judge Champaigne (a felony), which resulted in 68 days of deprivation of privacy and freedom, unnecessary forced psychotropic medication, when I suffered a physical disease, not a mental disease, about which the physicians were well aware.

Appendix E 25

Judge Tauro's Opinion

OPINIONS: AUTHORITIES CITED:

THE CONSTITUTION of the UNITED STATES of AMERICA

Amendment 4 "The right of the people to be secure in their persons", yet, in opposition to Statute M.G.L. C 123 S2 "Mechanical and chemical restraints 104 CMR 3.00...were unjustly employed when I wasn't a danger to myself or others (and never have exhibited such behavior)...but to "cover" the systemic metastasis and spetecemia, which mimicked a psychiatric presentation...and to render my testimony invalid...Dr. Beckhardt et. al. devised such an evil scheme saying "You're an R.N....You know too much!" (after having falsely written "psychosis/depression, though the elevated P waves and other EKG abnormalities, the x-ray revealing the apical "capping", the abnormally elevated CPK Enzymes and positive iso-enzymes etc., all proved I suffered physical pain; and Thia Sontag's lies of "physically and verbally abusive" "psychomotor agitation" etc., were an excuse the Unscrupulous planned so I would lose my freedom; as I had merely apologized for taking up a bed and the staff's time, and requested that I not undergo a physical exam. The only time I moved, was

upon hearing that yet another psychiatrist had been called, as almost every time I sought relief from my physical pain, during the preceding 11 months, a psychiatrist was called/suggested...to "cover" for Ma. Gen.'s fatal biopsy;,,,,and I stated "I'm leaving" (as may be read in the record), and was seized, in violation of the fourth amendment, and thrown onto a bed (Assault and Battery) (and with a dangerous weapon..i.e. a unnecessary and illegal/unlawful needle, containing harmful medications, which I didn't need!)...tied in leather restraints for over eight hours, without food/water/bathroom privileges/or permission to make a single phone call even....and the staff never once loosened the restraints).....and, after 8 hours, transferred to the Cardiac Care Unit (in restraints), and after three days...kidnapped/transferred against my will...to a psychiatric institution....when I suffered a physical disease, about which the physicians were aware (I had said, in shock and horror.."You can't do this!" "I'm not a danger to myself or others!" and was smugly informed "Your behavior is inappropriate!" (looking for relief from pain?...attempting to find a physician who would removed a diseased organ, so I would live?)

I was forced into an ambulance 12/22/93, after having been "doped" to insensibility via forced injections and then threats ("If you don't take these pills by mouth, you'll get a shot!"), and kidnapped to a psychiatric hospital (when I had never suffered from a mental disease!)

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on July 20, 1993, regarding Judge Tauro's Dismissal for lack of subject matter jurisdiction of 2/22/93. The subject matter concerns violations of human, civil and constitutional rights! I had clearly stated that this was not essentially a medical malpractice complaint, but a violation of the constitution, and my right to liberty and life!. Because I must represent myself, legal loopholes and unscrupulous people have prevented this subject matter from being exposed. The United States Supreme Court does have jurisdiction when the state courts fail to concern themselves with this violation of the Fourteenth Amendment. Thus this court's jurisdiction is invoked!

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV to the United States Constitution.

STATEMENT OF THE CASE

On 12/19/88, Dr. Murray deliberately disguised the inherent precariousness of my GYN condition, because he had failed to order a "timely" hysterectomy, in 3/88, 7/88 or 1987, and failed to follow up on the 9/88 Pap Smear or even tell me the true results! He failed to notate that he performed a Biopsy 12/19/88, failed to inform me of any results, and when I inquired one month later, he lied about the results, he failed to tell me he couldn't wait on 12/29/89 (as the second opinion M.D., required by the insurance company, suggested), but rather stated erroneously "WE CAN WAIT", ordering a 1/12/89 office biopsy, when an ovarian cyst ruptured 1/8/89. He also failed to inform me of this 1/19/89 - 1/25/89, while he stalled me doing unnecessary blood tests, until he went on vacation, and he failed to inform me of the metastasis via the blood in 2/89 on three different occasions...and failed to treat the septicemia. He and his partners, and Dr. Mandel manufactured propaganda (re my mother's death in 1987) to sway well meaning physicians to join them in the conspiracy to deny me a diagnosis and treatment of a condition that never should have happened in the first

place, but was 100% curable, and is now fatal. Worse even, my husband was informed that I suffered a "delusion" of physical illness for the 11 months preceding the rupturing of the cranial and apical nodules (12/17/89 and 12/19/89), which filled me with terror, not knowing what was happening to my once healthy body! When I was advised "You belong in a hospital under medication" and followed this advice, my freedom was unjustly denied me, whereupon hearing that yet another psychiatrist was being summoned, I tried to leave, (when the chest pain subsided) but was thrown onto a bed, put in four-point leather restraints, for more than eight hours (when I had been quiet), shot up with tranquilizing and psychotropic drugs (which I had never used), doped to insensibility and "kidnapped" (after three days in the cardiac care unit, I was transferred to a psychiatric hospital where I was advised to sign a voluntary and I would be "heard" by a Judge in three days, or otherwise I would have to wait 10 days. What happened to me regarding this medical error and criminal deprivation of my liberty...defies adequate description! To think that this could happen in the "free" United

States is mind-boggling and appalling, but true and I offer substantiated proof in the brief.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because this country is supposed to be a land of laws, and the Plymouth, Brocton and Boston courts will not address the issue of the violation of my freedom and (soon) life, but rather are influenced to "sweep it under the carpet", because of the false propaganda (which they assume to be true, but exposure of the true facts will substantiate my claims). Yes I did write that I didn't own property, only after I had been informed I was "committed up to six months", because Dr. Morrison lied that I would be "dangerous and incompetent", when I have never been such! (In 1966, we purchased a home for $15,900 and in 1982, because my husband co-authored computer science text books, in addition to teaching...he and his partner were able to purchase summer homes; ours was $65,000)

A tumor was removed between C1 and C2, which would have caused respiratory arrest and skeletal paralysis, which was the Unscrupulous' plan, but that a proficient neuro-surgeon, unaware of the evil plan, removed this tumor which was "just touching the spinal cord", and about which many physicians were aware! Thus

my life was extended a few years, though the tumors are systemic and the Glazier's Limbic Encephalitis caused a progressive degenerative disease of the brain, which will result in dementia. Will you allow the deliberate and planned destruction of a human life to go unexposed? Will I go to my grave, with my family unaware my death was due to physicians' errors?

I tried in vain for treatment, until I felt the bone pain and realized the meaning of my friend's words 4/89 (whose son is a radiologist to whom I sent my Cat Scans) "Oh Eleanor...I'm so sorry I could cry!" "What could they do at that point?" "We're praying for you"! There didn't have to be a THAT POINT! This "cover up" wherein physicians bury their mistakes by involving well meaning physicians, putting them in the unenviable position of having to lie, which they do because they believe the unscrupulous' propaganda, as they destroy reputations and years of sacrifice for love and duty, and lie that my motivation was money! The truth will restore my reputation and assure that this heinous crime will not be repeated. Physicians cannot be allowed to discipline their own, because they don't! The Medical Malpractice Tribunals are a

charade and farce! This is a land of laws and the law has been broken, and those involved in the violation of the Fourteenth Amendment must be held accountable!

CONCLUSION

In the United Nations' Doctrine (1948) is written "Disregard and contempt for human rights have resulted in barbarious acts which have outraged the conscience of mankind", and these acts include the pre-planned torture, (physically, emotionally and psychologically) of a good and decent citizen, the exposure of which will outrage the conscience of every decent human being, and the perpetrators must be exposed! This is similar to the Holocaust, and it is not just I who have been victimized. Why have the medical malpractice premiums spiraled downward? It isn't that mistakes aren't happening, because honest mistakes will happen, but physicians don't tell and fix them, as my husband so naively proclaims they do,...when it's easier to "send the patient to a 'big shot' in Boston, lie about the patient's "history", and bury the mistake! Why are only 1% of medical malpractice claims resolved in favor of the defendant? I have been able to procure SOME of my records, and have met some decent physicians, who couldn't allow this atrocity, without some expression of horror.! In thanksgiving to them for allowing the extra three years, (though I should be able

to have enjoyed 30, as my vascular condition was so healthy), I do not want well meaning physicians to be punished, but the pernicious ones who planned the psychiatric hospitalization and forced psychotropic drugs to further lower my white blood count, keeping me from my family at Christmas, New Year's, my daughter's wedding shower etc....unnecessarily, assuming as they did that I would become paralyzed and "on" a respirator, from the tumor they knew existed (and the "suspicious lesion" in the breast was diagnosed falsely as a "cyst that was completely drained", until I went elsewhere and the lesion was still present at the 6:00 area, and was removed (5/8/89)....but the "firm to hard mass" was described falsely as "no tumor", when the plan of the Unscrupulous was revealed, and no treatment was offered, such that the breast damage had spread by the 1991 mammogram, but was still unacknowledged and untreated. Why bother when the Disease Process will render her brain dead?

In 1948, the United Nations Doctrine lists the following rights, which I have been denied: (3)...the right to life and liberty and security of person...(5) "No one should be subject to torture or

cruel inhumane treatment" (8) "Everyone is entitled to a fair and public hearing by an IMPARTIAL TRIBUNAL (12) "No one should be subject to (unjust) attacks upon his honor and reputation" (28) "Everyone is entitled to a social and international order in which rights and freedoms set forth in this Declaration can be fully realized". Finally, recalling Justice Goldstein's words "IT WOULD BE A GRAVE MISTAKE TO EVER BE COMPLACENT ABOUT INDIVIDUAL FREEDOM AND DIGNITY, please realize the indignities to which I have been subjected and order a complete disclosure of the facts via a Grand Jury or Trial. I will represent myself Pro Se, as I know the details and do not wish to petition for In Forma Pauperis, because my husband has worked hard so that our family has always been independent. We "get by" and I don't want to detract from our budget. I signed that I didn't own property in 1989, to receive counsel for an Appeal to the outrageous commitment, and because the Unscrupulous had lied to my husband that I wasn't physically ill, I didn't know if he would be able to pay or would pay, and I was under undue stress, having just heard the unbelievable news of the "commitment". I pray the court will

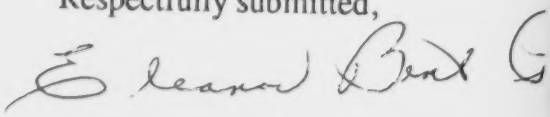
examine the 68 days of my unjust and illegal confinement, and realize that I didn't suffer a mental illness then, or ever. I am not the first, I am sure, to have been deliberately misdiagnosed, (knowing the metastasis would resemble a psychiatric disturbance... causing terror and pain), but I could be the last, if the court will grant me the Writ.

RELIEF

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter. The issue is violation of constitutionally guaranteed rights, and the very validity and reliability of the Constitution.

DATED: October 1, 1993

Respectfully submitted,



Eleanor Bent
Pro Se

APPENDIX A

Decided July 20, 1993

OPINION OF THE
UNITED STATES COURT OF APPEALS
For the First Circuit

No. 93-1296

Eleanor A. Bent v Massachusetts

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

(Hon. Joseph L. Tauro, U.S. District Judge)

BEFORE

Breyer, Chief Judge

Selya and Boudin, Circuit Judges.

Per Curiam. We conclude that the district court properly dismissed plaintiff's action for lack of subject matter jurisdiction.

Plaintiff complained of the treatment she and her mother received from various private doctors and other health care providers. She contended the providers' conduct was so egregious

as to amount to a deprivation of her constitutional rights to privacy, life, liberty and the pursuit of happiness.

Because the defendants are all private actors, plaintiff has failed to state any viable federal civil rights claim under 42 U.S.C. 1983. Mendez v. Belton, 739 F. 2d 15, 17 (1st Cir. 1984). At best plaintiff set forth state law cause of action. As complete diversity of citizenship is lacking between the parties, the federal district court did not have jurisdiction to adjudicate the state law claims and properly dismissed the action. Lindquist v. Precision Valley Aviation, Inc., 946 F.2d 8, 10 (1st Cir. 1991) ("Under 28 U.S.C. 1332 (a) (1), there is diversity of citizenship if the plaintiff is a 'citizen' of a different state than all of the defendants.") (emphasis added): Franklin v. Murphy, 745 F.2d 1221, 1229 (9th Cir. 1984) (absent diversity, district court has no subject matter jurisdiction over medical malpractice claim against private defendants.

Affirmed.

APPENDIX B

Decided February 17, 1993

OPINION OF THE

BROCTON SUPERIOR COURT

Eleanor Bent v. Massachusetts General Hospital

BEFORE CORTLAND MATHERS AND LAWYERS FOR THE DEFENDANT (without informing me of the action, so I could be present to state that Massachusetts General has persistently refused to provide me my complete and accurate medical records, in defiance of a court order of April 24, 1992, and in violation of the law, as I had been seeking the true results of my 1/30/89 Biopsy and the true and complete 1/30/89 blood value results...since 3/89).

The court having considered the "pleadings" and affidavits, finds there is no genuine issue as to material fact and that the defendant is entitled to a judgment as a matter of law, it is ORDERED and ADJUDGED that the defendant, Massachusetts General Hospital is entitled to a judgment as a matter of law, it is ORDERED and ADJUDGED that COMPLAINT OF PLAINTIFF

Eleanor Bent be hereby DISMISSED AGAINST DEFENDANT Massachusetts General Hospital with costs. (thereby rewarding defiance of a court order) (words in parentheses have been added by Plaintiff).

APPENDIX C

Decided January 29, 1993

OPINION OF THE

BROCTON SUPERIOR COURT

Eleanor Bent v. Massachusetts General Hospital

Before: Mathers, Cortland C.A.

The defendant stated that "proof of the elements of her claim is unlikely to be forthcoming at trial" (because they refused to provide the proof by refusing to obey the law and provide my complete and accurate medical record that indicated the uterine wall was cut (via a three inch scar that was later noted on a ultrasound) which allowed the tumors in the Endometrium to metastasize, along with sepses, via the circulatory system. However the Plaintiff was able to prove, via Aposteriori reasoning (despite being denied the Apriori proof) via blood tests, MRI and Cat Scan results, Kidney ultrasounds and operations removing tumors etc. (the results of

which were denied/disguised, in an attempt to keep the truth hidden!)

APPENDIX D

Decided July 10, 1992...Docketed January 17. 1991

OPINION OF C. A. MATHERS

Eleanor Bent v Earl P. Gelman M.D.

Before: C.A. Mathers (Regional Administrative Justice)

The Defendant (falsely) stated 1. "On the face of said Complaint, the Statute of Limitations has run" and 2. "The Plaintiff does not comply with Rule 8(a) by setting forth a short and plain statement of the claim showing that she is entitled to relief, not does it comply with the requirements of Rule 10 with respect to from of pleadings.

(Having been denied legal representation, I wasn't aware of the rules, which is what the Unscrupulous intended/planned). This physician had "problems" in another state, and was found guilty of sexual misconduct, but was allowed to practice Gynecology in Massachusetts, on unsuspecting women. Dr. Murray procured him (10 days after realizing my condition.... that required immediate, life-saving attention, about which he failed to inform me, realizing

he had "goofed"in 3/88, 7/88, 9/88 etc.) as the (insurance company required) "second opinion". At the end of the exam, I felt a moderately painful contraction, and Dr. Gelman later stated the presence of "lubrication" (as why he didn't think I was post-menopausal). This painful contraction brought back memories of a similarly painful contraction, experienced under Scopolomine, during the births of one of my first six children; and the "after-effects" had been experienced with my husband. Embarrassed, I had no intention of announcing this incident, until I realized Dr. Gelman's reasons for suggesting a "third opinion...a progesterone/estrogen level/a big shot in Boston"! ...realizing why Dr. Granai looked angry... just before performing the (fatal) biopsy.

(When I declined Dr. Gelman's suggestion of "With your permission, I will say you'd like to wait on the operation"....saying (not wanting to "slight" him), "I'll go home and write the "pros" and "cons"...I'm not afraid of the knife, but I get a superficial phlebitis!", adding "I don't want to hurt Dr. Murray's feelings...with all the troubles he is having", and "I wrote to the State Board praising him" (Dr. Murray)..... Dr. Gelman

immediately jumped up from his chair stating "I'll see if Dr. Murray is still in his office!" "If you do have the operation, you'll have to take medication!")

Judge Mathers wrote "No further proceedings are to be docketed when presented by this plaintiff/without prior approval of the regional administrative justice", so I went to Boston, realizing Judge Mathers must have believed the propaganda and "Gorilla Dust", (even though Dr. Gelman was arrested when discovered in his car, engaging in oral sex with a HIV Aids-infected prostitute, certainly reducing his credibility...and the only "bad" anyone could say about me, was what I falsely wrote about myself, in my untherapeutic attempts to punish myself for the pain my mother endured, for which I foolishly blamed myself.

APPENDIX E

Decided February 22, 1993

OPINION OF THE
United States District Court

Eleanor Bent v Massachusetts General Hospital et. al.

Before: TAURO, Ch. J.

This action is hereby DISMISSED for lack of subject matter jurisdiction. It is so ordered.

(2)

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In the Supreme Court of the United States

OCTOBER TERM, 1993

ELEANOR BENT
Petitioner,

v.

MASSACHUSETTS GENERAL HOSPITAL, ET AL
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS, LAHEY CLINIC FOUNDATION, BURTON MANDEL, M.D., ALAN CORDTS, M.D., SOUTH SHORE HOSPITAL AND FALMOUTH HOSPITAL

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BEST AVAILABLE COPY

QUESTION PRESENTED FOR REVIEW

Whether plaintiff's Petition for Writ of Certiorari has failed to demonstrate that the Court of Appeals, in affirming a judgment of dismissal for lack of federal subject matter jurisdiction, thereby created a conflict between circuits, significantly departed from accepted and usual course of judicial proceedings, or decided an important question of federal law in a manner in conflict with applicable decisions of this Court, and has thus failed to present any special and important reasons for exercising this Court's discretionary review of the decision below.

PARTIES TO THE PROCEEDINGS BELOW

The parties in the United States Court of Appeals for this First Circuit were the plaintiff, Eleanor Bent, and defendants, Massachusetts General Hospital, Cornelius Granai, M.D., Lahey Clinic Foundation, Burton Mandel, M.D., Alan Cordts, M.D., South Shore Hospital and Falmouth Hospital.[1]

Mrs. Bent's Petition for Writ of Certiorari makes reference to actions taken by numerous other individuals or entities. To the extent that some of these additional apparently named defendants may be deemed parties to the original United States District Court action, even though never properly served with the summons and complaint, none were properly made parties to the proceedings in the First Circuit from which plaintiff now seeks review.

[1] Lahey Clinic Foundation, South Shore Hospital and Falmouth Hospital are all corporate entities which should have been named and referred to as, respectively, Lahey Clinic Foundation, Inc., South Shore Hospital, Inc. and Falmouth Hospital Association, Inc. None of these corporate entities has subsidiaries. South Shore Hospital, Inc., is a subsidiary of South Shore Health and Education Corp.; Falmouth Hospital Association, Inc. is a subsidiary of Falmouth Hospital Foundation, Inc.

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Hagans v. *Levine*, 415 U.S. 528 (1974) 7

Haines v. *Kerner*, 404 U.S. 519 (1972) 7

Harvey v. *Harvey*, 949 F.2d 1127 (11th Cir. 1992) 7

Joyce v. *Ferrazzi*, 323 F.2d 931 (1st Cir. 1963) 7

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LeMieux Brothers, Inc. v. *Tremont Lumber Co.*, 140 F.2d 387 (5th Cir. 1944) 4

Lugar v. *Edmonson Oil Co., Inc.*, 457 U.S. 922 (1982) 7

Orlowski v. *Massachusetts Rehabilitation Comm'n.*, 585 F. Supp. 1408 (D. Mass. 1984) 6

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Sweeney v. *Westvaco Co.*, 926 F.2d 29 (1st Cir.), *cert. denied* 112 S.Ct. 274 (1991) 5

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

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28 U.S.C., § 1331	vii, 5, 7
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F.R. Civ. P. 12(b)(1)	1
F.R. Civ. P. 12(b)(6)	1
5 Wright & Miller, *Federal Practice and Procedure*, § 1206	4
16 Wright, Miller, Cooper & Gressman, *Federal Practice and Procedure*, § 4004	3

OPINIONS AND JUDGMENTS BELOW

The judgment of dismissal in the United States District Court for the District of Massachusetts, and the judgment and Memorandum opinion of the First Circuit Court of Appeals affirming said dismissal, were unpublished. They are, however, reproduced in essentially accurate form as Appendix E and Appendix A, respectively, to Mrs. Bent's Petition.

The decisions reproduced as Appendix B, Appendix C and Appendix D in Mrs. Bent's Petition were not rendered as any part of the proceedings in this case below, and therefore are not properly before this Court for review.

GROUNDS FOR THIS COURT'S JURISDICTION

Mrs. Bent's petition fails to set forth the specific statutory grounds upon which she invokes this Court's jurisdiction. The only possible grounds for such jurisdiction in this case would be 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., Amend. 14, § 1

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C., § 1331

> The District Courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1332(a)

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $50,000.00, exclusive of interest and costs, and is between-
>
> (1) citizens of different States;
>
> (2) citizens of a State and citizens or subjects of a foreign state;
>
> (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by The Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

F.R. Civ. P. 8(a)

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleaders seeks. Relief in the alternative or of several different types may be demanded.

STATEMENT OF THE CASE

This action alleging various claims essentially sounding in tort was commenced by Eleanor Bent, *pro se*, in the United States District Court for the District of Massachusetts on or about September 24, 1992. Several separate complaints, each purporting to state claims for relief against various physicians and hospitals within the Commonwealth of Massachusetts, were filed by Mrs. Bent simultaneously. The District Court assigned all of these complaints the same docket number and accordingly treated them as one case.

Mrs. Bent subsequently effected service of process upon some, but not all, of the defendants named in her various complaints.

The specific grounds for invoking federal court jurisdiction were not apparent from Mrs. Bent's pleadings. Motions for more definite statements were filed on behalf of defendants Massachusetts General Hospital and Cornelius Granai, M.D., and on behalf of Lahey Clinic Foundation, and Burton Mandel, M.D. Mrs. Bent's further pleadings in response to these Motions still failed to establish a clear basis for federal court jurisdiction. Motions to Dismiss pursuant to F.R. Civ. P. Rules 12(b)(1) and 12(b)(6) for lack of federal subject matter jurisdiction and for failure to state a claim upon which relief may be granted were filed on behalf of all the defendants.

On February 22, 1993, the District Court (Tauro, C.J.), having held a status conference with respect to this case and having considered the pleadings and challenges to jurisdiction raised therein, ordered that this action be dismissed for lack of subject matter jurisdiction. No factual record was created in the District Court.

Plaintiff thereafter sought appeal to the United States Court of Appeals for the First Circuit. The Court of Appeals affirmed

the judgment of dismissal, noting in its Memorandum of Decision that plaintiff had failed to demonstrate federal question jurisdiction under 42 U.S.C., § 1983 and had failed to establish federal diversity jurisdiction under 28 U.S.C., § 1332.

Plaintiff filed her original Petition for Writ of Certiorari in this Court on October 18, 1993. An amended Petition, corrected to comply with this Court's rules for format and citation, was served by plaintiff on or about November 9, 1993, and received by counsel for the within defendants on November 12, 1993.

ARGUMENT

I. Plaintiff's Petition Has Failed To Establish Any Unique Grounds Of Overriding Public Or Constitutional Interest Which Would Warrant This Court's Exercise Of Its Discretionary Certiorari Jurisdiction.

This Court long ago held that the enabling act of Congress creating jurisdiction to review cases from the circuit courts of appeal on Writ of Certiorari

> was intended to vest in this Court a comprehensive and unlimited power. . . . [W]hile this power is co-extensive with all possible necessities and sufficient to secure to this Court a final control over the litigation in all the Courts of Appeal, it is a power which will be sparingly exercised, and only when the circumstances of the case satisfy us that the importance of the question involved, the necessity of avoiding conflict between two or more Courts of Appeal, . . . or some matter affecting the interests of this nation in its internal or external relations, demands such exercise.

Forsyth v. *Hammond*, 166 U.S. 506, 513-15 (1897).

Despite the undenied importance to individual litigants of the decisions rendered by the various circuit courts of appeal, this Court has consistently noted "it is very important that we be consistent in not granting this Writ of Certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal." *Layne & Bowler Corp.* v. *Western Well Works, Inc.*, 261 U.S. 387, 392-93 (1923) (per Taft, C.J.).

Defendants submit that the decisions of the District Court and First Circuit Court of Appeals in this case were correct interpretations of the statutes conferring jurisdiction upon the lower federal courts. Even if there were some colorable basis for arguing that Mrs. Bent had sufficiently invoked federal court jurisdiction, Certiorari still ought to be denied in light of the "manifest impossibility of granting review whenever there is any possiblity that the lower court was wrong." 16 Wright, Miller, Cooper & Gressman, *Federal Practice and Procedure*, § 4004 at 510. Certiorari should be reserved for those cases presenting "constitutional and statutory questions that are likely to have widespread general impact." *Id.* at 508.

Mrs. Bent's Petition seeking Writ of Certiorari fails even to assert that the First Circuit Court of Appeals below has "rendered a decision in conflict with the decsion of another United States Court of Appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort." Supreme Court Rule 10.1(a). She arguably has alleged, but has failed to demonstrate, that the Court of Appeals, "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision." *Id.* Nor has plaintiff shown that the court

below "has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court." Supreme Court Rule 10.1(c).

Indeed, both the District Court and Court of Appeals expressly *refrained* from deciding any of the constitutional or statutory issues which Mrs. Bent attempted to raise because she had failed in the first instance to demonstrate that the courts below had jurisdiction to consider and decide those issues. *Cf.*, Supreme Court Rule 14.1(i). Defendants therefore submit that, regardless of the merits of the decision below, the "special and important reasons", Supreme Court Rule 10.1, necessary to invoke this Court's Certiorari powers are missing from this case.

II. The Court Below Correctly Determined That Plaintiff Had Failed To Establish Federal Court Jurisdiction Over Her Claims.

"United States District Courts are courts of limited jurisdiction. Creatures of statute, they have only such jurisdiction as the statutes expressly confer, and this jurisdiction must always affirmatively appear." *LeMieux Brothers, Inc.* v. *Tremont Lumber Co.*, 140 F.2d 387, 389 (5th Cir. 1944). *See, generally*, 5 Wright and Miller, *Federal Practice and Procedure*, § 1206. This prerequisite to jurisdiction is reflected in Fed. R. Civ. P. 8(a)(1), which mandates that a complaint affirmatively state "a short and plain statement of the grounds upon which the court's jurisdiction depends. . ."

In her complaint, Mrs. Bent failed to set forth any basis for subject matter jurisdiction in the District Court over her claims against the defendant hospitals and private physicians. Faced

with no affirmative demonstration that it had subject matter jurisdiction over the complaint, the District Court dismissed, and the Court of Appeals properly affirmed.

A. *There is no diversity jurisdiction*

Federal courts have diversity jurisdiction in civil actions where the matter in controversy exceeds the sum of $50,000.00 and is between citizens of different states. 28 U.S.C., § 1332(a). The lack of complete diversity between parties deprives federal courts of jurisdiction over the lawsuit. *Strawbridge* v. *Curtiss*, 7 U.S. (3 Cranch) 267 (1806); *Sweeney* v. *Westvaco Co.*, 926 F.2d 29, 41 (1st Cir.) *cert. denied*, 112 S.Ct. 274 (1991).

Mrs. Bent's complaint does not even assert diversity jurisdiction under 28 U.S.C., § 1332. From the face of the complaint, it is apparent that Mrs. Bent and all of the defendants are citizens of Massachusetts. Thus, federal court subject matter jurisdiction could not have been predicated in this case on diversity of citizenship even if that basis had been alleged.

B. *There is no federal question jurisdiction*

Federal courts also may have subject matter jurisdiction in "civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C., § 1331. When federal jurisdiction is based upon the existence of a federal question, the complaint must refer to the particular federal statute under which the claim allegedly arises and must set forth facts which show that the claim does in fact arise under federal law. *Reid* v. *Hughes*, 578 F.2d 634, 637 (5th Cir. 1978) (general allegation of a federal question is insufficient if it is not supported by matters constituting the claim for relief sought). *See also*,

Orlowski v. *Massachusetts Rehabilitation Comm'n*, 585 F.Supp. 1408, 1409 (D. Mass. 1984) (plaintiff has burden of pointing out federal law giving federal court jurisdiction; otherwise, the court is powerless to act).

In the case at bar, the plaintiff's Complaint at best set forth vague allegations that the various defendants violated the plaintiff's rights to life, liberty and the pursuit of happiness. In the Court of Appeals, Mrs. Bent raised additional claims purportedly under the "United Nations Doctrine". In her Petition to this Court she now also cites the Fourth and Fourteenth Amendments to the United States Constitution and the federal civil rights statute, 42 U.S.C., § 1983. These allegations, absent state action, do not create jurisdiction.

Section 1 of the Fourteenth Amendment to the United States Constitution, states in relevant part:

> . . . nor shall *any state* deprive any person of life, liberty or property without due process of laws; nor deny any person within its jurisdiction the equal protection of the laws.

(emphasis added). 42 U.S.C., § 1983 extends liability for constitutional deprivations by private individuals *if* committed "under color of any statute, ordinance, regulation . . . of any state . . ." The mere allegation that the defendants violated plaintiff's constitutionally guaranteed rights, without any allegation of state action, did not satisfy Mrs. Bent's burden of proving the existence of federal court jurisdiction.

State action is present "when the state, by its law, has compelled the act." *Flagg Bros., Inc.* v. *Brooks*, 436 U.S. 149, 164 (1978) (citations omitted). *See also, Blum* v. *Yaretsky*, 457 U.S. 991 (1982). Mrs. Bent's Complaint did

not allege that the actions of the various defendants were either compelled or encouraged by state law.[2]

Plaintiff's allegations amount to charges of medical malpractice or intentional tort against numerous private physicians and private hospitals on theories of negligence, intentional withholding of information, intentional spreading of misinformation, conspiracy, wrongful death and restraint of physical liberty by means of an involuntary psychiatric hospitalization. On the face of the Complaint, none of these actions could fairly be attributable to the state. Thus, none of these claims establish any basis for federal jurisdiction under the Fourteenth Amendment, 42 U.S.C., § 1983, or 28 U.S.C., § 1331. *Flagg, supra; Blum, supra; Lugar, supra. See also, Joyce* v. *Ferrazzi*, 323 F.2d 931 (1st Cir. 1963); *Spencer* v. *Lee*, 864 F.2d 1376 (7th Cir. 1989); *Harvey* v. *Harvey*, 949 F.2d 1127 (11th Cir. 1992).

Defendants submit that plaintiff's Complaint, even read with all due leniency because of her *pro se* status, *Haines* v. *Kerner*, 404 U.S. 519, 520-21 (1972), failed to establish any basis for the exercise of federal jurisdiction in the court below. Whatever may be the merits of her state law claims, her *federal law claims* are either non-existent or insubstantial.

This Court has consistently held that the mere presentation of some issue tangentially involving federal law is not sufficient to vest a United States District Court with jurisdiction. In *Hagans* v. *Levine*, 415 U.S. 528, 536-37 (1974), this Court summarized and re-affirmed this doctrine:

[2] Indeed, many of plaintiff's allegations, if substantiated, would set forth claims for *violations* of state law. *See, Lugar* v. *Edmonson Oil Co., Inc.*, 457 U.S. 922, 937 (1982) (private abuse of a state statute does not constitute the "exercise of some right or privilege created by the state or rule of conduct inposed by the state", and thus fails to give rise to a section 1983 claim).

> the federal courts are without power to entertain claims otherwise within their jurisdiction if they are 'so attenuated and unsubstantial as to be absolutely devoid of merit"; "wholly unsubstantial"; "obviously frivolous"; "plainly unsubstantial"; or "no longer open to discussion". One of the principal decisions on the subject held, first, that "[in] the absence of diversity of citizenship, it is essential to jurisdiction that a *substantial* federal question be presented."

(emphasis added; citations omitted).

CONCLUSION

The judgment of the Court of Appeals for the First Circuit as to which plaintiff seeks a Writ of Certiorari was consistent with decisions of this Court and of the other circuit courts of appeal with respect to all relevant constitutional and statutory provisions. Plaintiff has failed to demonstrate in her Petition any constitutional or statutory question of overriding importance or interest to the general public warranting this Court's discretionary review.

Defendants Lahey Clinic Foundation, Burton Mandel, M.D., South Shore Hospital, Falmouth Hospital and Alan Cordts, M.D., respectfully request that plaintiff's Petition for Writ of Certiorari be denied.

Respectfully submitted,
By their attorneys,

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(3)

Supreme Court, U.S.
FILED
JAN 14 1994
OFFICE OF THE CLERK

No. 93-793

In the
Supreme Court of the United States

OCTOBER TERM, 1993

ELEANOR BENT,
Petitioner,

v.

MASSACHUSETTS GENERAL HOSPITAL, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT.

BRIEF IN OPPOSITION OF RESPONDENTS, MASSACHUSETTS GENERAL HOSPITAL AND CORNELIUS GRANAI, M.D.

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QUESTION PRESENTED

Whether the Petitioner has failed to demonstrate that the decision of the United States Court of Appeals for the First Circuit, in affirming the United States District Court of Massachusetts order of dismissal of the Petitioner's complaint for lack of subject matter jurisdiction raises a special and important reason for the United States Supreme Court to exercise certiorari review of the decision below?

PARTIES TO THE PROCEEDINGS BELOW

The parties in the United States Court of Appeals for the First Circuit were the *pro se* plaintiff, Eleanor Bent, and the defendants, Massachusetts General Hospital,[1] Lahey Clinic Foundation, Inc., South Shore Hospital, Inc., Falmouth Hospital, Inc., Cornelius Granai, M.D., Burton Mandel, M.D., and Alan Cordts, M.D.

[1] Although some of the pleadings filed by the *pro se* plaintiff listed a defendant of the name "Massachusetts General Hospital," the correct name of the corporate entity is The General Hospital Corporation d/b/a Massachusetts General Hospital. That entity has no subsidiaries and is a wholly-owned subsidiary of The Massachusetts General Hospital Corporation.

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MISCELLANEOUS.

5 Wright and Miller, *Federal Practice and Procedure*, 1206 7

OPINIONS AND JUDGMENTS BELOW

The unpublished judgments of the United States District Court and the United States Court of Appeals for the First Circuit are set forth accurately, except for various editorial comments, by the Petitioner as Exhibits E and A, respectively, to her Petition for Writ of Certiorari. The other decisions reproduced as Appendices to the Petitioner's petition for Writ of Certiorari were not rendered in this federal action and therefore should not be reviewed by this Court.

GROUNDS FOR THIS COURT'S JURISDICTION

The Petitioner seeks to invoke this Court's jurisdiction by Writ of Certiorari pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. 14, § 1

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1331

> The district courts shall have original jurisdiction of all actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1332(a)

The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum of $50,000, exclusive of interest and costs, and is between —

(1) citizens of different states;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by The Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

Fed. R. Civ. P. § 8(a)

> A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or thirdparty claim, shall contain (1) a short and plain statement of grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

STATEMENT OF THE CASE

The Petitioner, Eleanor Bent ("Ms. Bent"), a Massachusetts resident, filed a lawsuit in the United States District Court of Massachusetts on November 2, 1992 against the Respondents, Massachusetts General Hospital of Boston, Massachusetts, a private charitable institution, and Cornelius Granai, M.D., a gynecologist who is a former member of the Massachusetts General Hospital Medical Staff. At various other times in the fall and winter of 1992, Ms. Bent filed other complaints against the Lahey Clinic Foundation, Inc., South Shore Hospital, Inc., Falmouth Hospital, Inc., Alan Cordts, M.D. and Burton Mandel, M.D.[2] All of the medical institutions are Massachusetts corporations.

Ms. Bent alleged in her complaints that she received medical treatment from Dr. Granai and other health care professionals at Massachusetts General Hospital, and from other physicians

[2] The United States District Court of Massachusetts consolidated all of the complaints filed by the Petitioner into one civil action.

at other hospitals, in January and February of 1989. Ms. Bent's complaint was utterly devoid of any statement regarding the basis for federal court jurisdiction in this action. The only mention of federal law in Ms. Bent's complaint were the vague references that Dr. Granai "violated a federal statute that protects [her] constitutional right to life," and "[h]ow can federal statutes protecting my constitution [*sic*] right to life . . . be broken?" Nowhere in her complaint, however, did Ms. Bent identify which federal statutes she claimed had been violated, or how, and by whom, she believed they had been violated.

On November 18, 1992, the Massachusetts General Hospital filed a Motion for a More Definite Statement on the grounds that (1) it was not clear from her complaint whether Ms. Bent was intending Dr. Granai to be a defendant in this action, and (2) Ms. Bent did not specify which federal statutory and/or constitutional provisions she was alleging had been violated or how they had been violated. The District Court did not act on Massachusetts General Hospital's motion, but soon thereafter scheduled a status conference for all of the parties. On February 22, 1993, after the status conference, the District Court (Tauro, C.J.) issued a written order dismissing Ms. Bent's action for lack of subject matter jurisdiction.

Ms. Bent filed a notice of appeal to the United States Court of Appeals for the First Circuit on March 8, 1993. Substantive briefs were filed thereafter by all parties. On July 20, 1993, by written memorandum, the United States Court of Appeals for the First Circuit affirmed the decision of the District Court.

In November 1993, Ms. Bent filed a Petition for Writ of Certiorari in the United States Supreme Court. Counsel for the Respondents, Massachusetts General Hospital and Dr. Cornelius Granai received a copy of the Petition on November 16, 1993. The Court subsequently enlarged until January 14, 1994 the period of time for filing oppositions to Ms. Bent's Petition.

ARGUMENT

I. The Court Should Deny Ms. Bent's Petition Because She Has Failed to Demonstrate That There Are Special and Important Reasons for Exercising the Court's Discretionary Review.

The Court should deny Ms. Bent's Petition for Writ of Certiorari because she has failed to demonstrate that there are special and important reasons for exercising the Court's discretionary review. The Supreme Court's certiorari decisions under 28 U.S.C. 1254, unlike appeals, are wholly within the Court's discretion, and will only be granted when there are special and important reasons therefor. *Durham* v. *United States*, 401 U.S. 481, 483 (1971); Supreme Court Rule 10. The Court has consistently stated that it will exercise this discretionary power only where there is a great matter of public interest in the resolution of the issue decided below. See, e.g., *Forsyth* v. *Hammond*, 166 U.S. 506, 514-515 (1897) (the Court's power "will be sparingly exercised, and only when the circumstances of the case satisfy us that the importance of the question involved, the necessity of avoiding conflict between two or more Courts of Appeal, . . . or some matter affecting the interests of this nation in its internal or external relations, demands such exercise"); *Layne & Bowler Corp.* v. *Western Well Works, Inc.*, 261 U.S. 387, 392-393 (1923) (per Taft, C.J.) ("it is very important that we be consistent in not granting this Writ of Certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal"). Considerations favoring certiorari review of a federal court of appeals decision include when the decision conflicts with the decision of another federal court of appeals, or the Court, on the same matter; decides a federal

question in a way in conflict with a state court of last resort; departs greatly from the accepted and usual course of judicial proceedings; or decides an important federal question which has not been, but should be, settled by the Court. Supreme Court Rule 10.

In her Petition for Writ of Certiorari, Ms. Bent fails to assert that the Court of Appeals has decided an issue of federal law in an manner in conflict with that of a state court of last resort, another federal court of appeal, or by the Court, or which has not been, but should be, settled by the Court, or has departed greatly from the accepted and usual course of judicial proceedings. For this reason alone, the Court should deny Ms. Bent's Petition for Writ of Certiorari. As there exist no "special and important reasons" for exercising the Court's discretionary jurisdiction under 28 U.S.C. § 1254(1), the Court should deny Ms. Bent's Petition for Writ of Certiorari.

II. The Court Should Deny Ms. Bent's Petition Because the Court of Appeals Correctly Determined That Subject Matter Jurisdiction Is Lacking In This Case.

The Court should deny Ms. Bent's Petition for Writ of Certiorari, because the Court of Appeals correctly determined that subject matter jurisdiction is lacking in this case. "United States District Courts are courts of limited jurisdiction. Creatures of statute, they have only such jurisdiction as the statutes expressly confer, and this jurisdiction must always affirmatively appear." *LeMieux Brothers, Inc.* v. *Tremont Lumber Co.*, 140 F.2d 387, 389 (5th Cir. 1944). 5 Wright and Miller, *Federal Practice and Procedure*, 1206. This policy is reflected in the requirement of Fed. R. Civ. P. 8(a)(1) which mandates that a complaint affirmatively state "a short and plain statement of the grounds upon which this court's jurisdiction depends . . . ." Where there is neither complete diversity of citizenship between the

parties nor federal issues raised which would provide the District Court with subject matter jurisdiction, the Court is without jurisdiction and dismissal of the complaint is appropriate. *Sweeney* v. *Westvaco Co.*, 926 F.2d 29 (1st Cir. 1991), *cert denied*, 112 S.Ct. 274 (1991).

In her complaint, Ms. Bent failed to set forth any basis for subject matter jurisdiction for the District Court over her claims against any of the Defendants in the case. An examination of her complaint, furthermore, reveals that this is a civil suit premised upon a state law cause of action against private individuals and that all of the parties to the action are citizens of the Commonwealth of Massachusetts. There is no basis for subject matter jurisdiction in this case. Thus, the Court of Appeals committed no error in affirming the District Court's dismissal of her complaint.

A. *There is no diversity jurisdiction.*

Federal courts have diversity jurisdiction in civil actions where the matter in controversy exceeds the sum of $50,000 and is between citizens of different states, or between citizens of a state, and foreign states or citizens or subjects thereof, or between citizens of different states and in which foreign states or citizens or subjects thereof are additional parties. 28 U.S.C. § 1332(a). The lack of complete diversity between parties deprives federal courts of jurisdiction over the lawsuit. *Owen Equipment* v. *Kroger*, 437 U.S. 365, 373 (1978); *Sweeney* v. *Westvaco Co.*, 926 F.2d 29, 41 (1st Cir. 1991), *cert denied*, 112 S.Ct. 274 (1991).

In the present case, the complaint is devoid of any reference to diversity jurisdiction. In any event, even from the face of the complaint, it is apparent that complete diversity is lacking, as both Ms. Bent and all of the defendants are citizens of Massachusetts. Thus, even if Ms. Bent had alleged the existence of

diversity jurisdiction it is clear that such jurisdiction does not exist in this case.

B. *There is no federal question jurisdiction.*

Federal courts also may have subject matter jurisdiction in "civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. "In the absence of diversity of citizenship, it is essential to jurisdiction that a substantial federal question be presented." *Hagans* v. *Levine*, 415 U.S. 528, 536-537 (1974) (emphasis added). Moreover, when federal jurisdiction is based upon the existence of a federal question, the complaint must refer to the particular federal statute under which the claim allegedly arises and must set forth facts which show that the claim does in fact arise under federal law. *See, e.g., Reid* v. *Hughes*, 578 F.2d 634, 637 (5th Cir. 1978) (general allegation of a federal question is insufficient if it is not supported by matters constituting the claim for relief sought); *Polhemus* v. *American Medical Ass'n*, 145 F.2d 357, 359 (10th Cir. 1944) (complaint must present a genuine and substantial federal question, and court may decide as to legal sufficiency of the facts alleged to support the claim).

In the present case, Ms. Bent's complaint was utterly devoid of any statement regarding the basis for federal court jurisdiction in this action. Nowhere in her complaint did Ms. Bent identify which federal statutes she claimed had been violated, or how they had been violated. Ms. Bent's conclusory allegations that Massachusetts General Hospital and Dr. Granai violated her constitutionally guaranteed right to life and pursuit of happiness, however, do not establish a substantial federal question which would give rise to subject matter jurisdiction in the federal district court. Because Ms. Bent failed to allege with sufficient clarity a federal statute which would vest the

district court with subject matter jurisdiction and allege facts that would support a substantial claim under such a statute, federal court subject matter jurisdiction in this case may not be based upon federal question jurisdiction.

Interpreting her complaint liberally, one might conclude that Ms. Bent attempted to allege violations of section 1 of the Fourteenth Amendment to the United States Constitution, which states in pertinent part as follows:

> . . . nor shall any state deprive any person of life, liberty or property without due process of laws; nor deny any person within its jurisdiction the equal protection of the laws.

U.S.C. Const. Amend. 14, 1.

Although 42 U.S.C. § 1983 extends liability for deprivations of an individual's Fourteenth Amendment rights to private individuals acting under color of state law, the action must have been compelled or encouraged by the state. *See, e.g., Flagg Bros., Inc.* v. *Brooks*, 436 U.S. 149, 164 (1978); *Blum* v. *Yaretsky*, 457 U.S. 991, 1004 (1982).

In her complaint, Ms. Bent failed to allege that any of the alleged actions of any of the defendants had been compelled or encouraged by state law. Indeed, Ms. Bent could not have alleged in good faith that any of the defendants, including Massachusetts General Hospital and Dr. Granai, had been acting as agents for a state government during their alleged interaction with her. It is undisputed that at all times relevant to Ms. Bent's complaint the defendants were private citizens, and not agents of any state government. Since any claim under the Fourteenth Amendment would obviously fail as a matter of law for lack of state action, Ms. Bent's complaint provides no substantial federal question which would grant the District Court subject matter jurisdiction in this action. As Ms. Bent

has failed to adequately allege, and in good faith cannot demonstrate, that her complaint raises a substantial federal question, the Court of Appeals was correct in affirming the District Court's dismissal of her complaint on the basis of lack of federal question jurisdiction.

CONCLUSION

The First Circuit correctly concluded that the plaintiff's complaint set forth at best a state law tort claim against private individuals with no diversity of citizenship. As the Courts of Appeals' decision was consistent with decisions of this Court and of the other federal courts of appeal with respect to all of the relevant constitutional and statutory provisions, and the plaintiff has failed to demonstrate in her Petition the existence of any constitutional or statutory question of overriding public importance or interest warranting this Court's discretionary review, the defendants, Massachusetts General Hospital and Cornelius Granai, M.D., respectfully request that this Court deny the plaintiff's, Petition for Writ of Certiorari.

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